

The Juvenile Law Reader

IS IT TIME TO RE-EXAMINE OREGON'S OPEN JUVENILE DEPENDENCY PROCEEDINGS?



Oregon juvenile court proceedings have been open to the press and the public since the Oregon Supreme Court's ruling in *Oregonian v. Deiz* 289 OR 277 (1980). The *Deiz* case was brought to the Supreme Court on a writ of mandamus when the press was barred from the courtroom in the case of a girl, who was being adjudicated in connection with the drowning of a child.

The Oregonian argued successfully that the statute, which then granted broad authority to juvenile judges to control access to the courtroom, was invalid because it was contrary to Oregon Constitution Article I, Section 10, which provides that no court could be secret, and that justice must be administered openly and without delay.

The *Deiz* ruling came at a time when very few juvenile courts allowed open juvenile dependency proceedings. For many years Oregon was the only state with unconditionally open juvenile dependency hearings. And for many years it was thought that because of our open dependency hearings, Oregon was out of compliance with the 1974 Child

Abuse Prevention and Treatment Act (CAPTA), which provided funding to the states. Recent legislation has clarified that CAPTA does not prohibit open juvenile dependency hearings and has led to other states modifying their closed court policies. See, e.g., *To Open or Not to Open: The Issue of Public Access in Child Protection Hearing*, NCJFCJ 2004

Currently, Oregon is one of only two states to have proceedings fully open to the "public" – being any person, private or media, who is interested in attending. See chart to the right.

The debate over whether to allow the public and the press access to juvenile courts continues to be as heated and intense as it was back in 1980. Here is a summary of the arguments pro-open courts and con-closed courts:

PRO

- Closed proceedings support the notion that something shameful has occurred;
- Exposing the physical, mental and emotional ramifications of abuse and neglect on children will

encourage others who are suffering maltreatment to report and break the cycle of secrecy and violence within the family;

- Parents are less likely to deny substance abuse if others are present to dispute their claims;

- Children testify rarely in these cases and other protections can shield the child from harm;

- Openness makes the system more accountable & will lead to system problems being addressed;

- Allows input on the question of community standards as to what is "enough abuse/neglect to warrant intervention"; and

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Type of Proceeding / States

Open: Minnesota, Oregon

Closed: Arkansas, Delaware, District of Columbia, Hawaii, Idaho, Kentucky, Louisiana, Massachusetts, Mississippi, Montana, New Hampshire, **Nevada, New Jersey, Pennsylvania, Rhode Island, South Carolina, **Utah, Vermont, Virginia, West Virginia, Wyoming

Open with Judicial exception to close:

Colorado, Florida, Indiana, Iowa, Maryland, Michigan, Nebraska, New York, North Carolina, Ohio, Texas, Washington

Closed with Judicial exception to open:

Alabama, Alaska, Arizona, California, Connecticut, Georgia, Maine, **Missouri, Oklahoma, South Dakota, Tennessee, Wisconsin

Closed with exceptions:

Illinois, Kansas, New Mexico,

** Denotes Pilot projects to open

- From NCJFCJ *infra*

Treatment, Services, and Intervention Programs for Child Delinquents

The Office of Juvenile Justice and Delinquency Prevention's (OJJDP) Child Delinquency Series, examines the efficacy and cost effectiveness of treatment, services, and intervention programs for younger delinquents. This Bulletin (NCJ 193410) discusses juvenile justice program strategies and reviews four promising interventions for child delinquents (thirteen and younger). The Canadian approach to child delinquency, which may serve as a guide to prevent delinquency here in the U.S. is also profiled. The research indicates that youth 13 year olds and younger are at an age when interventions will most likely succeed in diverting them from chronic delinquency. It goes on to conclude that timely and effective treatments of child delinquents who are still young and impressionable may prevent their progression to chronic criminality.

One in Three Abused Babies Likely to be Abused Again

Babies who have been abused are at very high risk of further abuse, according to research in the *Archives of Disease in Childhood*. Researchers in Wales followed babies who had been abused before the age of 12 months and subsequently allowed to return home for three years after the initial abuse and discovered that almost one in three were reabused in that time. The rate of reabuse among the returned babies was 31%, which is much higher than in the general population. Babies coming from families with mental illness and domestic violence histories were more likely to be reabused. The researchers concluded that: "All this represents a serious failure in secondary prevention in babies where the consequences can be

death and disability. We must focus child protection services more on actually protecting babies and be more cautious where intervention involves their reintroduction to their families." The paper can be accessed at:

http://press.psprings.co.uk/adc/september/845_ac35493.pdf

Abused, Neglected Youth Don't Receive Adequate Mental Health Services

A study in the *Journal of the American Academy of Child & Adolescent Psychiatry* shows that only one fourth of children seen in the child welfare system for alleged maltreatment receive the specialized mental health care, such as evaluation by a child and adolescent psychiatrist or other mental health professional, and just 16% of maltreated children receive mental health services overall.

Abused and neglected children are at high risk of emotional and behavioral problems. Previous studies have focused on children placed in foster care, but this study focused on the 90% of victims of alleged maltreatment, who continue living in their parents' home or live with relatives after reported maltreatment. This group was less likely to receive services. Similarly, while 64% of children seen by the child welfare system are seen for neglect rather than abuse, only 13% of neglected children receive mental health services.

The full study appeared in the August 2004 *Journal of the American Academy of Child & Adolescent Psychiatry*.

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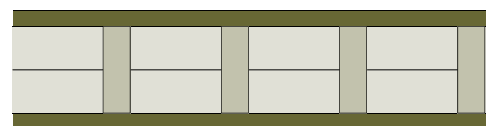
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IMMIGRATION CONSEQUENCES AND RIGHTS IN JUVENILE CASES

The Performance Standards of the Oregon State Bar Assn. for delinquency cases, Standard 2.8 requires that counsel be fully aware of and ensure that the client is fully aware of the collateral consequences of adjudication including the possibility for a non-citizen of deportation. Attorneys for parents and children in dependency cases also need to be aware of the immigration status of their clients and the options available to obtain legal immigrant status. It is important that immigration status be determined before the adjudication of the petition, if possible. This article will provide basic information about the Special Immigrant Juvenile Status, which provides a mechanism for children in foster care to obtain legal status and eventually citizenship.

There are essentially five categories which describe the immigration status of people present in the United States. A person can be a citizen or United States national, a temporary visitor on a non-immigrant visa, a lawful permanent resident, an asylee or refugee who is allowed to remain because of persecution in their home country or an undocumented person whose presence is illegal because they do not have permission from the United States government to enter or remain in the country.

If the appropriate conditions are met, a person may be granted status as a lawful permanent resident. The benefits of this include the right to live and work permanently in the United States, to travel in and out of the country and to apply for United States citizenship.

One risk inherent in any attempt to address a person's immigration status is that if their application is denied, the person could be deported, depending on their situation. It is also important to understand that a child who gains legal status through SIJS procedure does not have the right to immigrate other family members as

would other legal permanent residents or citizens.

In general, the SIJS program allows an undocumented juvenile who is eligible for long-term foster care as a result of neglect, abuse or abandonment to apply to qualify as a legal permanent resident. Ordinarily, a person can only apply for legal permanent resident status based on family relationships, employment and a few special situations. The application is a two step process in which the juvenile must qualify as a special immigrant and simultaneously petition to receive legal permanent resident status.

The SIJS program is very significant because qualified children cannot be deported for having entered the country without inspection or having failed to maintain valid non-immigrant status or for certain other grounds by the Bureau of Citizenship and Immigration Services (BCIS fka INS) before being presented to the juvenile court.

The first step is to identify the status of the child. DHS should be obtaining citizenship documentation in the early stages of the case. If a child does not have a U.S. birth certificate, naturalization papers or a Lawful Permanent Resident status (a green card), the child's immigration status needs to be evaluated.

The next step, if the juvenile court petition has not yet been adjudicated, is to make sure that the language required by the SIJS statute is included in the juvenile court petition and dispositional order. The petition needs to ask the court to declare the child a dependent child deemed eligible for long-term foster care (as defined in 8 CFR Sec. 204.11) based on abuse, neglect or abandonment by the child's parents, that reunification is no longer a viable option, and that it is not in the child's best interest to be returned to the home country. If the petition has already been adjudicated, a motion for a dec-

laration of SJIS qualification can be requested.

Once the court order is obtained, the child should obtain the forms and apply for SIJS at the BCIS. If possible the services of an immigration attorney should be obtained to assist the child with the BCIS process.

SIJS eligibility also carries other benefits. While the application is being considered the juvenile is protected from deportation and is also authorized to work. Finally, an important advantage of this program is that it allows the applicant to complete the process without leaving the country.

In brief, a person is eligible for SIJS if the person:

1. Is under twenty-one years old;
2. Is unmarried;
3. Has been declared a dependent of a United States juvenile court, under state dependency laws and while living in the United States;
4. Remains a dependent and is eligible for long-term foster care;
5. Has had a judicial determination made that it would not be in the child's best interests to returned to their country of origin or that of their parents' last habitual residence.

In the next issue: **What Delinquency Attorneys Need to Know About Immigration.**

**NOVEMBER IS
NATIONAL ADOPTION
MONTH—YOU CAN
ANSWER THE CALL BY
CONTACTING YOUR
LOCAL DHS OFFICE**

Open Courts con't

- The public has a right of access to government functions & failure to provide access leads to lack of public confidence in a "secret system".

CON

- Deters children from reporting abuse and parents from seeking help;
 - Causes process-trauma to child victims & witnesses;
 - Reduces resilience for abuse victims;
 - Increases susceptibility to distress for victims;
 - Compromises the child's ability to recover from the abuse and move forward with life;
 - Deters parents from admitting abuse/neglect, which is essential to treatment;
 - Causes public stigmatization of the child and family; and
 - Intrudes into family privacy regarding extremely personal matters;
 - Accountability, the original motive for openness is not being achieved.
- The debate about open versus

closed juvenile dependency hearings continues to be controversial. The fact, however, that Oregon continues to be on the extreme end of practice raises the question of whether unconditional openness is right for Oregon or really required by the *Diez* case.

COMPETENCY IN JUVENILE CASES

Continued from Issue 1

Competency Evaluations

To obtain a useful competency evaluation for a juvenile, whether in a delinquency case or an adult criminal case, a practitioner must have a clear understanding of the competencies that youth must have to perform different tasks in the juvenile and adult criminal court process. "Competence" in this context means having capacities that are directly connected to performing the tasks at hand, such as being capable of making a meaningful

decision about a particular issue - whether, for example, to waive *Miranda* rights. A "competent" youth must also have the capacity to participate in the court process, with all that entails. The more complex the process the greater the demand on the youth's capacities.

A forensic evaluation for competency, unlike an evaluation for treatment which is updated periodically, is a one-time evaluation. This means that the evaluator must be provided the best possible information "up front". This information must include: extensive background information, treatment records, school records, third party interviews, etc. The evaluation will be more credible if it does not presume the accuracy of self-reported information or rely on a single source.

An evaluator should be a qualified psychologist and have training and experience in evaluating children and adolescents. Evaluators who evaluate only adult defendants should not be used for juvenile competency evaluations. Evaluators need to be familiar with current literature and psychological tests that are appropriate for children
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CASE LAW UPDATES

State ex rel Juvenile Department of Marion County v. Charles Harris Strothers IV, 2004 Ore. App. LEXIS 1224 (Sept. 22, 2004)

The Appellate court held that youth offenders, who committed delinquent acts prior to the 2001 statutory amendment revising the definition of youth offender, should be adjudicated under the 1999 definition of youth offender found in ORS 419A.004(33) (1999). The 1999 statute defined "youth offender" as "a person who has been found within the jurisdiction of the juvenile court . . . for an act committed by the person when the

person was at least 12 years of age and under 18 years of age." The 2001 amendment altered the definition to define a "youth offender" as "a person *at least 12 years of age* who has been found within the jurisdiction of the juvenile court . . . *for an act committed by the person when the person was under 18 years of age.*" The appellant, who committed the delinquent act in 2000 when he was 11 year old, should have been adjudicated under the 1999 definition, and under the 1999 statute he did not qualify as a youth offender because he was under the age of 12. Thus the dispositional order committing the

youth, as a youth offender, to the custody of OYA until the age of 25 was invalid. The order of commitment was reversed and remanded for redispotion.

In preparation for entry of the final order in *Strothers*, OYA is identifying cases of youth committed prior to age 12 to determine whether redispotion is needed. As the Reader goes to press, it is unknown how many youth will be affected by the *Strothers* decision.

COMPETENCY - Continued from page 4

and adolescents, including the MacArthur Foundation Study: *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants* and the tools for evaluation, including the *Competence Assessment Tool - Criminal Adjudication (MacCAT-CA)* and the *MacArthur Judgment Evaluation (MacJEN)*. The study and tools are available on the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice website: <http://www.mac-adoldev-juvjustice.org>.

Evaluators should be knowledgeable about child and adolescent development, juvenile or criminal justice issues, and experience in evaluating competence of youth in the type of proceeding the youth is involved in.

Attorneys should check with the evaluator to assure that they will be using tests that have been designed for adolescents and not adults. The evaluator should obtain or be provided a complete developmental history, mental health history and academic history from the youth's parents and records. Evaluators must be very familiar with the legal standards involved and should provide direct evidence about what the youth is able to understand or do in the situation.

"For example, every evaluation for capacity to waive Miranda rights should include, at a minimum, evidence about what the youth thinks that each component of the Miranda warning means. Every evaluation for competence to stand

trial should include specific evidence about what the youth does or does not comprehend about the charges, the possible consequences of the trial, the trial process, the roles of people in the trial, etc." Schwartz & Rosado, *EVALUATING YOUTH COMPETENCE IN THE JUSTICE SYSTEM*, ABA Juvenile Justice Center (2000).

The evaluator must be required to explore how the youth interprets what they understand and whether their beliefs allow them to use their knowledge meaningfully in making decisions. In a *Miranda* context for instance, it is not sufficient that a youth knows that s/he can have a lawyer. S/he must also know what

Con't. on page 8.

CASELAW UPDATES - continued from p. 4

U.S. Supreme Court to decide if juvenile death penalty is unconstitutional.

On October 13th the U.S. Supreme Court heard oral arguments in *Roper v. Simmons* and will rule whether the juvenile death penalty is unconstitutional. In August 2003, the Missouri Supreme Court overturned the death sentence of Simmons on the grounds that it violated the Eight Amendment's ban on cruel and unusual punishment. Simmons was 17 at the time of the crime. Over 50 child advocacy organizations filed an amicus curiae brief calling for the end to the juvenile death penalty. <http://www.jlc.org/newsletter/august2004.htm> The brief points out the entrenched legislative and judicial view that adolescents lack the mature judgment of adults, which is reflected in hundreds of statutes nationwide that limit youth's participation in activities open to adults along with case law

from the Supreme Court sharing this view. In addition, the brief points to research that clearly demonstrates the differences between the brain development of adolescents and adults.

Amicus curiae briefs were also filed on behalf of Simmons by foreign leaders, Nobel Peace Prize winners and former US diplomats.

The Court seemed particularly interested in the fact that the US is virtually alone in the world in condoning the juvenile death penalty. According to the Oregonian (10/14/04 p. A4): "Juvenile offenders have been put to death in recent years in just a few other countries, including Iran, Pakistan, China and Saudi Arabia. All of those countries have gone on record as opposing capital punishment for minors."

The death penalty has been prohibited for waived juveniles in Oregon since 1985. ORS 161.620. That prohibition was continued in the codification of Measure 11. ORS137.707 (2):

". . . A person who was under 18 years of age at the time of the offense was committed is not subject to a sentence of death." The Simmons amicus briefs, which contain useful information on the latest thinking on youth culpability are available online at:

<http://www.abanet.org/crimjust/juvjus/simmons/simmonsamicus>.

Blakely v. Washington, 124 S. Ct. 2531 (2004). In *Blakely*, a case that is predicted to have major impact on sentencing in adult criminal cases, the Supreme Court, in holding that *only* a jury is able to determine whether to exceed state sentencing guidelines, recognized that "every defendant has the *right* to insist that the prosecutor prove to a jury all facts legally essential to the punishment" and that **the minor inconvenience** of a jury trial should not impede upon this right. Perhaps it is time to bring the issue of the "minor inconvenience" of jury trials in juvenile courts back before the Court?

NEWS BRIEFS

State Senator calls for Federal Investigation of Oregon State Hospital

State Senator Avel Gordly has called for an independent investigation into the civil rights violations from reported sexual abuses involving patients in Ward 40 of the Oregon State Hospital in Salem. Sen. Gordly requests that the U.S. Justice Department investigate the abuses so that the state is not investigating itself.

The Oregonian discovered through police records, court documents and interviews with eyewitnesses that psychiatric aides had raped, fondled or otherwise sexually abused at least a dozen mentally ill children who were sent to Ward 40 for treatment.

The Oregonian also reported that supervisors failed to report the abuse in a timely manner when they were discovered, allowing the alleged perpetrators to continue, as well as failing to alert the police, as required by law.

Both State Senators Avel Gordly (D-Portland) and Vicki Walker (D-Eugene) will introduce legislation to toughen the criminal penalties for hospital staff who fail to report abuse to law enforcement.

Citizen's Crime Commission Considers Proposals to Address Homeless Youth Problem

The Citizen's Crime Commission is considering policy recommendations, which if approved by the Commission,

would become recommendations to the Governor and the Department of Human Services to address the changing problems of youth homelessness. The policy proposals include that: 1. The state should agree that homeless youth are neglected as a result of being homeless and therefore eligible for some type of service from DHS; 2. The state should reaffirm its mandate to serve teens; and 3. The state should develop resources for the foster youth and homeless youth population. Specific proposals may also include setting standards for dismissal of DHS's legal custody of foster youth to assure that youth do not graduate from foster care to homelessness.

Upcoming Conferences, CLE's and Trainings

NLADA—The National Legal Aid & Defender Association's annual conference will be held in Washington D.C., December 1—4, 2004. The conference features a Defender Track and a Joint Defender & Civil Track: *Protect the Children—Education is Liberation*. Visit the conference website at:

www.nlada.org/Training/Training/Train_Annual for more information.

OCDLA—Oregon Criminal Defense Lawyer's Association will present a seminar based on the American Bar Association's Juvenile Court Training Curriculum: *Talking to Teens*, at their Fall Conference December 3, 2004 from 9 a.m. to noon at the Benson Hotel in Portland. The seminar will be presented by Elizabeth Colvin, an ABA Trainer and will focus on strategies for interviewing adolescent defendants, witnesses and victims. For more information contact OCDLA at

www.ocdla.org

SHOULDER TO SHOULDER - The sixth annual statewide Shoulder to Shoulder Conference is again approaching. This year's theme is "Working Together Today for a Healthier Tomorrow." The conference is scheduled for **Thursday, November 4, 2004 and will be held at the Jantzen Beach DoubleTree Hotel**. The cost of the conference is \$40.00 and includes both refreshments and lunch. Registration is available on-line at <http://dhstraining.hr.state.or.us>.

The Shoulder to Shoulder Conference is a collaborative effort to provide multidisciplinary training on issues relating to children and families. The Keynote Speaker is Marcia Lowry with Children's Rights in New York. Her presentation is "Children: Where are They Without Political Clout." Workshops will include: Educational Advocacy, Adoptions and Permanency, Poverty, Transition Planning for Teens, Sex Offenders and Visitation. There will also be two Judges

panels which will include Judges from throughout the State.

Child Welfare League of America—2005 Juvenile Justice National Symposium, *Joining Forces for Better Outcomes*, will focus on integration and coordination of Juvenile Justice and Child Welfare as an important aspect of working to better serve our nation's children. The symposium will be held June 1—3, 2005 at the Renaissance Eden Roc Hotel, Miami, Florida. For more information or to submit a presentation proposal contact CWLA at: www.cwla.org/conferences/2005jjsymposiumrfrp.htm

SAVE THE DATE:

****OCDLA**— Spring Juvenile Law Conference April 15 –16, 2005 at the Hallmark Inn.

****Juvenile Law Section** Spring Seminar March 11, 2005 at the Western Forestry Center.

A New Year and a New Era in Children's Mental Health

By Mark S. McKechnie, MSW

Planning continues apace for substantial changes to the Oregon Health Plan children's mental health system. The Office of Mental Health and Addictions Services (OMHAS) issued policy statements on the planned changes in September. (<http://www.dhs.state.or.us/mentalhealth/treatment/childmhsoc-initplngrp/index.html#policies>).

Full implementation of these changes was scheduled to begin on January 1, 2005. The schedule will likely be delayed until July 1, 2005, however, due to the time it will take for contracts to be finalized and Federal approval to come from the Center for Medicare and Medicaid Services. The policy changes will be phased in between now and July 1st.

Policy changes involve: 1) The way that services are financed; 2) The way that children are assessed for medically appropriate services; 3) The advisory board structure for county Mental Health Organizations (MHOs) and the State, including a requirement for 51% family and youth consumer representation on both local/regional boards and the state advisory board.



Advocates should be aware of significant changes to improve timely access for intensive services for children with serious emotional disturbances and mental disorders, and their families. OMHAS is in the process of writing a temporary Oregon Administrative Rule to cover what is being called the "Intensive Service Array" (ISA).

The ISA encompasses both traditional Intensive Treatment Services (ITS), such as day and residential treatment, as well as more non-traditional home and community-based services, which will be called "Intensive Support Services." Children eligible for the ISA will be entitled to a clinical care coordinator who will work with the child and family, as well as mental health providers and other child serving systems, such as child welfare, juvenile justice and special education, to access and coordinate services.

The Child and Adolescent Service Intensity Instrument (CASII) will be a required standardized assessment tool that MHOs and/or mental health providers will use to determine eligibility for the Intensive Service Array around the state for children ages six and older. A potential weakness in this system will be that the CASII will not be applied in all cases to determine the child's level of need.

Mental health providers and managed care plans may use the tool when they suspect that the child has significant mental health needs which exceed the scope of customary outpatient services, and the MHOs will be required to use the CASII to screen children for ISA eligibility upon request. MHOs will be required to advertise the availability of this screening and of the ISA services to families, case workers, probation officers and the like, but it will be important

for advocates to spread the word as well.

Timeliness requirements are also being added. For children who qualify for the ISA, MHOs will be required by contract to initiate services within the following timelines: no more than 24 hours in emergent situations, 48 hours for urgent needs and no more than 14 days for non-urgent situations. OMHAS anticipates that in the first year of this major system change, some children will receive a priority for the ISA services, including children who are at risk of being removed from their home or foster home, children with a history of multiple hospitalizations and/or residential treatment and children who've had their school placements disrupt due to their mental health symptoms.

In 2003-2004, 1,509 children, out of the 29,199 children served in Oregon's public mental health system, were served in the Oregon State Hospital and psychiatric day and residential treatment services. Less than half that number (690) received clinical care coordination services. OMHAS estimates that roughly twice that number of children who received ITS services last year (3,303) will be eligible for the Intensive Service Array, and all qualifying children will be eligible for care coordination services.

Many of the service models for children and youth considered to be effective in the 1999 report, "Mental Health: A Report of the U.S. Surgeon General," have some type of care coordination as a core service. Care coordinators here in Oregon will be responsible for working with families to access the appropriate type, amount and intensity of services that meet the child's and the family's needs.

COMPETENCY - con't from page 5

a lawyer does, that lawyer-client communications are confidential and that the lawyer is not just another agent of the court.

A well prepared competency evaluation should focus on the forensic issues and describe the youth's functioning in relevant areas, such as their capacity to assist their counsel. The assessment should describe the findings and opinions of the evaluator and identify the information that supports the findings and opinions. The evaluator should be able to report that s/he considered other possibilities and rejected them for specific reasons. All important factual information in the report should be attributed to its source. Generally, the evaluation should include: 1. Identifying information such as name, age, school grade and status, charges, reason for evaluation and at whose request the evaluation is being done. 2. The procedures used by the evaluator, including records reviewed, persons interviewed, client interview, specific psychological tests, place of evaluation, testing conditions, time evaluation took, notification of purpose of evaluation and whether youth understood it. 3. Relevant history. 4. Current clinical functioning. 5. Relevant forensic issues and capacities or functioning. 6. Conclusions and recommendations.

Standard for Competent *Miranda* Waiver

For a youth to make a valid waiver of *Miranda* rights the waiver must be voluntary, knowing and intelligent, based upon the totality of the circumstances. The totality of circumstances requires an assessment of the interaction between the circumstances of the interrogation and

confession, and the characteristics of the youth. Youth may fear police or give greater deference to authority than adults, and may therefore be more susceptible to suggestions than adults. The assessment of voluntariness requires close scrutiny to ensure that the youth was not coerced. Chronological and mental age (IQ) will be important factors in determining competence to waive *Miranda*. Unlike adjudicative competence, competence to waive *Miranda* rights requires a retrospective evaluation. What did the youth understand at the time s/he was interrogated? Empirical studies show that most juveniles 14 and under, and many juveniles 15 - 17 do not understand *Miranda* warnings as well as the average adult offender. (MacArthur Study).

The evaluation in *Miranda* waiver cases must analyze the legal competencies needed including: functional abilities - the ability to comprehend the warning (knowing what the words mean); grasping the significance of the rights (knowing that you don't have to talk to the police and what you say can be used against you); and the ability to process information (being able to intelligently determine whether it is in your best interests to talk to the police). The evaluation should look at causal factors and the interaction of abilities and situational demands.

Instruments for evaluation include the Comprehension of *Miranda* Rights (CMR), Comprehension of *Miranda* Rights - Recognition (CMR-R), Comprehension of *Miranda* Vocabulary (CMV), and the Function of *Miranda* Rights in Interrogation (FRI). The evaluation should also include interview of the youth, review of records, interview of parents, and interview of other parties present at the interrogation.

Assessment for Adjudicative Competence

The standard for adjudicative competence is whether the youth has sufficient present ability to consult with

her/his attorney with a reasonable degree of rational understanding and whether s/he has a rational as well as factual understanding of the proceedings against him/her. For a youth to have adjudicative competence s/he must be competent to assist counsel (understand the charges and basic elements of the adversary system, appreciate her/his situation as a defendant, and relate pertinent information to counsel concerning the facts of the case) and have decisional competence (understand information relevant to specific decisions at hand, appreciate his/her situation as a defendant confronted with the decision at hand, have the capacity to think rationally about alternative courses of action, and have the capacity to express a choice among alternatives).

Thirteen capacities have been identified as arising during the delinquency/criminal trial process. They are grouped under the subjects of: 1. Understanding of charges and potential consequences; 2. Understanding the trial process; 3. Capacity to participate with attorney in a defense; 4. Potential for courtroom participation. The competency evaluator should assess the youth on each of the thirteen capacities using collateral reports, records review, structured interview (using the Competency Assessment Interview (CAI), Fitness Interview Test-Revised (FIT-R) and/or the MacArthur Competence Assessment Tool - Criminal Adjudication (MacCAT-CA)) and also using competence screening instruments to assess the youth's understanding of trial related concepts - the Competency Screening Test (CST), the Georgia Court Competency Test-Mississippi State Hospital (GCCT-MSH), the Brief Symptom Inventory (BSI), and/or the Competency Assessment to Stand Trial-Mental Retardation (CAST-MR). The evaluator should also administer traditional psychological tests such as MMPI, WISC-III, WRAT-3 and the Child Behavior Checklist.

Independent Living Resources for Foster Children

ILSP

Independent Living Subsidy Program
(Living Costs Subsidy)

Award Amount **\$449 per month**
(Limitations vary)

Eligibility Checklist

- ___ 17 to 21st birthday
- ___ Remain in DHS Custody
- ___ Live in own place
- ___ 40 hr. school/work week
- ___ Must finish HS or GED
- ___ Must work (unless enrolled in HS or GED)

___ Monthly meetings with DHS and ILP workers

___ Keep budget, receipts

Reviewed Quarterly

Application and Contact

(No youth self-application)

DHS/ILP worker applies to: Judy Kiefman

Phone: 503.257.4226 x266

ILP-CH

Powerhouse Program and Chafee
(Room and Board Subsidy)

Award Amount **\$400 per month**
(\$6000 limit)

Eligibility Checklist

- ___ 18 to 21st birthday
- ___ Out of DHS Custody
- ___ Live in own place
- ___ 40 hr. school/work week
- ___ Must finish HS or GED
- ___ Must work (even if enrolled in HS or GED)
- ___ Monthly meetings with DHS and ILP workers
- ___ Keep budget, receipts

Reviewed Quarterly

Application and Contact

Youth can self-apply or DHS/ILP worker applies to:

Bonnie Dalton

Phone: 503.257.4226 x206

ETV

Education/Training Voucher
(Post-secondary Costs)

Award Amount

\$5,000 per year

(Other OSAC awards included in \$5,000 limit)

Eligibility Checklist

- ___ Until 23rd birthday
- ___ In or out of DHS
- ___ DHS 6 mos. after age 14 or adopted after 16
- ___ Foster care or live on own
- ___ Getting enrolled or already in post-secondary program
- ___ Keep budget, receipts

County ETV Discretionary Funds available

Reviewed by OSAC

Application and Contact

Youth can self-apply or DHS/ILP worker applies

ILP

Independent Living Program
(Transitional Training/Services)

Services Available

- Job readiness
- Skills training
- Money/time management
- Housing search
- College entrance (application, grants, loans, deadlines)
- Cooking/nutrition
- Health preparedness
- Self-esteem building
- Social Skills

Eligibility Checklist

- ___ 14 to 21st birthday in DHS
- ___ 18 to 21st birthday once in DHS – voluntary
- ___ DHS 6 mos. after age 14 or adopted after 16

Application and Contact

Local ILP office and/or
DHS worker

Con't from p.8

Educating the Court

Judges, even in juvenile court, frequently have very little accurate information about adolescent development and the true capabilities of youth who come before them. Counsel must painstakingly educate the court about the differences between juvenile and adult competency. There are also many biases and myths about competency in specific and adolescents in general that must be debunked.

The lack of clarity on the requirement that juvenile defendants be competent before they are tried is clear from a recent Oregonian article. The article ran in the September 14, 2004 Metro Section (at pp. B1 & 3) with a sub-heading that read: "Shooting plea: Minor's deal despite parents' wishes unusual". The case involved a 17 year-old being tried as an adult on Measure 11 charges including attempted murder. The story relates that after the trial had commenced, the youth had struck a plea bargain with the state against

his parents' wishes. According to the Judge, "it is unusual to seal plea bargains with minors over their parents' objections." But he ultimately did so after the defense attorney explained that the youth "had been in foster care since he was 5 and had had limited contact with his mother and father during the past decade." It is difficult to understand how a presumptively competent youth would be incapable of entering into a plea agreement without parental consent.

So Your Client is Incompetent— What Now?

The Juvenile Code does not prescribe what should happen when a youth is found to have adjudicative incompetence. Legislation is presently being drafted by the Oregon Law Commission, Juvenile Code Revision Workgroup. It is hoped that the 2005 legislature will pass this bill, but until there is legislation it will be left to the creativity of juvenile defenders to develop plans that will satisfy juvenile judges that incompetent youth are adequately supervised and provided treatment to remediate their deficits.

The system's primary obligation at this point is not only to provide effective treatment, but to do so in a context that avoids unnecessary restriction of liberty. Hospitalization should be avoided in favor of treatment in

context that avoids unnecessary restriction of liberty. Hospitalization should be avoided in favor of treatment in

the community whenever possible. Fortunately the juvenile justice system and the child welfare system have a broad array of placements and treatment options that can be leveraged into an acceptable package for the incompetent juvenile defendant.

For youth who are able to make gains in their competency, re-evaluation and re-hearing of the competency issue will be necessary. It must be recognized though that the relevant abilities of some youths with mental disorders will not improve within a reasonable period of time. When treatment does not achieve competence within a reasonable period of time (not specified in the Oregon Juvenile Code, but one year in many jurisdictions) the charges must be dismissed, because criminal charges may not be used as a justification for continued treatment and confinement in order to "restore" competence when there is little or no prospect that restoration can ever occur. *Jackson v. Indiana*, 406 U.S. 715 (1972).



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Juvenile Rights Project, Inc. (JRP) is a public interest law firm and advocacy organization promoting the rights and interests of our community's most vulnerable children – those involved in the child welfare and juvenile justice systems. JRP has a 29 year history of representing children individually in the Multnomah County Juvenile Court and through class action litigation. JRP also advocates for Oregon's children in the legislature and with public agencies, and offers training and technical assistance to families, social service and legal professionals around the state who care for and work on behalf of some of Oregon's most disadvantaged children.